

ETHICS ADVISORY PANEL
OPINION #94-65 REQUEST #536
Issued December 6, 1994

The inquiring attorney seeks guidance regarding the continued use of a firm name. The inquiring attorney's law partner is leaving the law firm and will be employed at a corporation. The departing partner plans to become "of counsel" to the law firm. The law firm would like to retain its present name of which the departing partner's name is a part thereof.

Rule 7.5 entitled "Firm Names and Letterheads" provides that:

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

"Of counsel" has been defined as "a close, regular, personal relationship; but a relationship which is neither that of a partner (or its equivalent, a principal of a professional corporation), with the shared liability and/or managerial responsibility implied by that term; nor, on the other hand, the status ordinarily conveyed by the term 'associate'; which is to say a junior non-partner lawyer . . ." ABA Formal Opinion 90-357(1990).

The title "of counsel" generally applies to four types of relationships; "the part-time practitioner, the retired partner who remains associated with the firm, the probationary partner-to-be and the permanent status in between those of partner and associate but having the quality of tenure." ABA Formal Opinion, 90-357.

The rule regarding the use of the "of counsel" lawyer's name in the law firm's title is that if the lawyer is a named partner of the firm and is retiring to become "of counsel," the lawyer's name may be retained in the firm name. See, ABA Formal Opinion 90-357(1990); Vermont Ethics Opinion 83-7; Virginia Ethics Opinion 660(1985). This is not true if instead of retiring, the lawyer is withdrawing to practice in another place, to take other employment or is taking a leave of absence. "A lawyer who withdraws as a partner from a law firm but remains "of counsel" to the firm may not continue to include his name in the firm name because such inclusion connotes partnership. The firm may however,

list its former name in parentheses under its new name." Philadelphia Ethics Opinion 88-31 (Nov.1988). See also, Michigan Informal Opinion CI-1001-84 which opined that a law firm may not retain the name of a partner who has left the firm and accepted employment elsewhere, nor may the lawyer be listed on the firm's letterhead as "of counsel" if there is no close continuing relationship between the lawyer and the firm.

The Panel opines that the departing "of counsel" attorney may not continue to have his/her name a part of the lawfirm's name because such inclusion connotes a partnership and is therefore misleading to the public and the inquiring attorney's proposed relationship with the law firm does not satisfy any of the four general types of relationships quoted above.